

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NUMBER 00-6311-CR-HUCK

UNITED STATES OF AMERICA,
Plaintiff,

VS.

CLARENCE LARK, Et Al.
Defendants


GOVERNMENT'S RESPONSE TO MOTIONS TO STRIKE SURPLUSAGE FILED BY
DEFENDANT RICARDO MCHORNE

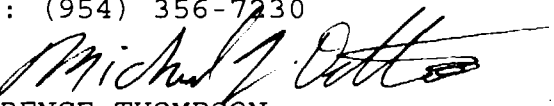
Comes now the United States, and hereby files its response to the Motion to Strike Surplusage filed by Defendant McHorne.

Defendant Mchorne asserts that the fact of his prior conviction should be stricken from the indictment. The Court in Apprendi v. New Jersey, 120 S.Ct. 2348, 2632 (2000) held that any fact, other than the fact of a prior conviction, that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to the jury and proved beyond a reasonable doubt. The Court itself, however, noted that this holding was in some manner internally inconsistent in that it made little logical sense to treat the fact of a prior conviction differently from other factors that increase punishment. Thus, in case the law changes, the United States erred on the side of caution and included the allegation of McHorne's prior conviction in the

indictment. If the defendant McHorne were to admit to his prior conviction and waive any right to a jury trial he might have on this issue, the United States would agree to remove this allegation from the indictment that is given to the jury. It should, however, remain in the indictment filed with the Court.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 5th

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A handwritten signature in black ink, appearing to read "Michael J. Dittoe", written over a horizontal line.

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